

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF
LANCASTER COUNTY, NEBRASKA

In the Matter of Policy for)
the Vacating of Public Roads)
Initiated by Private Parties)

Resolution No. 3049

WHEREAS, the County Board of Lancaster County, Nebraska wishes to establish a uniform policy for the vacating of public roads initiated by private parties; and

WHEREAS, a uniform policy has been agreed upon which is outlined in the documents attached hereto consisting of an instruction sheet for the vacation of public roads initiated by petition of private parties, a combination petition and quit claim deed and instruction sheet, and a form for signatures requesting vacation; and

WHEREAS, the County Board deems it in the public interest that a current version of the above-named documents should be on file at all times in the County Clerk's office available for public inspection;

NOW, THEREFORE, BE IT RESOLVED that the County Board of Lancaster County, Nebraska, adopt the guidelines and procedures set out in the attached documents as the process for vacating roads by initiation of private parties. That amendments to the attached documents may be made by motion and not resolution, provided, however, that an up-to-date version of said documents shall remain on file at the County Clerk's office and be available to the public for the public's information and inspection.

Dated this 17th day of February, 1976 in the County-City Building, Lincoln, Nebraska.

/s/Jan Gauger

/s/Robert E Colin, Sr.

BY THE BOARD OF COUNTY
COMMISSIONERS LANCASTER
COUNTY, NEBRASKA

INSTRUCTION SHEET - - VACATION OF PUBLIC ROADS
INITIATION BY PETITION OF PRIVATE PARTIES

IMPORTANT: PLEASE READ THIS INSTRUCTION SHEET FULLY. THE PROCEDURE FOR PROCESSING REQUESTS TO VACATE STREETS, ALLEYS OR OTHER PUBLIC ROADS IS LONG AND INVOLVED AND IMPROPERLY COMPLETED PETITIONS OR FORMS WILL CAUSE ADDITIONAL DELAY.

The power to vacate a street, alley or a public road within Lancaster County outside the City of Lincoln or other county municipalities, is vested in the Board of Commissioners. The Board may vacate a public road if it deems that such a vacation would be in the "public interest". The statutes of the State of Nebraska prescribe a procedural process for determining whether or not a road should be vacated, and in addition to this, Lancaster County requires certain other steps to be taken before a vacation petition can be acted upon.

If the County Board should decide to vacate the public road, it may either sell the property, allow it to revert to private ownership or have it remain in the public ownership. The Board's choice of alternatives will depend on the facts of each particular vacation.

The Board may also condition any vacation as it sees fit. It can be expected that the preservation of all existing easements, right-of-ways or similar encumbrances for public utilities or other beneficial or necessary uses will be a condition of most vacations. In any vacation where the land is to be sold, vacation will necessarily be conditioned upon the payment to the County of the entire purchase price of the property together with any fees or expenses charged from or for all parties purchasing right-of-way or to whom expenses have been assessed in the vacation process.

Step 1: The Nebraska Statutes (39-1723) require that:

Any person desiring the relocation, vacation or abandonment of any public road of the County, shall file in the office of the County Clerk of the proper county, a petition signed by ten or more electors (registered voters) residing within ten miles of the road proposed to be relocated, vacated or abandoned, which petition shall contain: 1) the names and addresses of said electors, 2) a clear and unambiguous description of the road proposed to be relocated, vacated or abandoned, 3) the reason or reasons why said road should be relocated, vacated or abandoned, and 4) a request that a time and date be set for public hearing before the County Board

A form for this petition is available either in the office of the County Clerk or the County Attorney.

Step 2: At the same time, or as soon thereafter as possible, as the petition with the names of ten registered voters is filed with the County Clerk, Lancaster County also requires that the primary petitioner file with the County Clerk an Information Sheet and separate Petition to Vacate a Public Road with Release and Waiver of Rights and Title and Quit Claim to the County of Lancaster from each owner of property abutting the road to be vacated. A separate sheet of information regarding filling out this petition is provided.

Step 3: Within two weeks of the receipt of the petition with ten registered voters' signatures thereon as described in paragraph one, the County Board directs the County Engineer, by resolution, to study the use being made of such public road and to submit, in writing, to the County Board within 30 days a report upon the study made and his recommendations as to the relocation, vacation or abandonment thereof. At the same time, the County Board will refer the matter to the Planning Department, which shall report in writing within 30 days, unless a longer period is granted by the County Board, as to the character and degree of conformity or nonconformity of the proposed vacation to the Comprehensive Plan. And, if the road to be vacated is within three miles of the City of Lincoln, City Council approval must also be obtained. This process will be initiated by the Planning Department. The City Clerk will forward such approval or disapproval to the County Clerk and the Board of Commissioners.

While preparing his report, the County Engineer will have an independent appraisal made of the property based on Federal Highway Administration (FHWA) standards if a deposit is made with the County Clerk to cover the cost of such an appraisal. The deposit may vary according to the project involved, but \$200 shall be the minimum deposit. If the deposit is not made, no appraisal will be performed and it cannot be anticipated that the County Board will vacate the road in question. The appraisal shall consider the costs of making the land usable and whether or not a similar dedication is being made to replace the road proposed to be vacated. An appraisal may not be required when the vacation is part of a platting process. Although it can be expected that the appraisal will be acceptable to the County Board in most cases, the Board shall not be absolutely bound by the appraisal.

If the appraisal costs are more than the \$200 deposit, the primary petitioner shall be liable for the remainder of such costs before the vacation is finalized. If the appraisal costs are less than the \$200 deposit and any additional expenses owing the county by the primary petitioner, including the purchase price of any vacated real estate, such excess money shall be refunded after finalization of the vacation.

If, at the time the Board directs the County Engineer by resolution to study the use being made of such public road and before an appraisal is made, it is clear that the public interest will not be served by such a vacation, the primary petitioner will be so informed and shall have the opportunity to withdraw the request. This step does not, however, guarantee the petitioner that, if an appraisal is made, the vacation will be granted. Likewise, if it is clear that the road requested to be vacated is a road the County intends to vacate on its own initiative, the primary petitioner shall be so informed and no appraisal or quit claim deed shall be required.

Step 4: When the County Board has received the County Engineer's report, they will set a time, date and place for a public hearing upon the vacation. The resolution fixing the time, date and place for a public hearing must be published in a legal newspaper of the County for three consecutive weeks (publication during each week must be on the same day of the week as the first publication). The Board, not less than two weeks in advance of the hearing will, by registered or certified mail, send copies of the resolution setting that date to the owners of land abutting on or adjacent to the road to be vacated. All of the requirements set forth in the steps above should be completed by the time of the public hearing.

Step 5: After the public hearing, the County Board, by resolution, at its next meeting or as soon thereafter as practical, either vacates or refuses to vacate the road in question, subject to any of the conditions outlined above. A quit claim deed will be given to those persons purchasing property in this process only after all fees from all parties have been received and all the other conditions of the vacation have been met.

HOW TO COMPLETE THE INFORMATION SHEET AND PETITION FOR VACATION OF PUBLIC WAY

Every abutting property owner must complete an Information Sheet and Petition to Vacate Public Way with Release and Waiver of Rights and Title. The Information Sheet is self explanatory and must be filled out completely.

On the "Petition to Vacate Public Road with Release and Waiver of Rights and Title and Quit Claim to County of Lancaster, Nebraska" form, please note the blank lines on the top half of the first page following the words, ". . . petition you to vacate the following described street/alley/public road . . ." On these lines **PLEASE TYPE** or **CLEARLY PRINT** the public way or portion thereof sought to be vacated, such as "Mountain Lane between the east line of 9th Avenue and the west line of 10th Street" or "All of the north/south alley in Block 500, Original Plat".

Next, please note the blank lines near the top of the second page of the petition form immediately following the body of the petition. On these lines please insert the legal description (**NOT ADDRESS**) of the land abutting the aforesaid public way sought to be vacated, which land is owned by the persons or organization signing the petition. Example: Lot 10, Block 500, Original Plat.

The Petition to Vacate Public Road with Release and Waiver of Rights and Title and Quit Claim to County of Lancaster, Nebraska will accomplish a quitclaim of the abutting landowner's reversionary interest in such public way to the County; hence the requirements for signing the petition are the same as for a deed. All signatures must be acknowledged before a notary public. If title to the land is in the name of "John James Doe", Mr. Doe should sign the petition the same way. If he is married, even though title may be in his name alone, his wife must also sign the petition. If her name is "Mary L. Doe", she should sign the petition in that manner (**NOT "Mrs. John James Doe"**). Marital status must be shown in the notary public's acknowledgment, such as "John James Doe and Mary L. Doe, husband and wife" or "John James Doe, single".

If a petitioner is a corporation, the name of the corporation should appear **EXACTLY** as it is shown on the title to the land. The petition must be signed by the president or the presiding officer of the board of directors of the corporation. The corporate notarial acknowledgment form is on Page 9.

PETITION FOR VACATION OF PUBLIC ROAD

The undersigned registered voters of Lancaster County, Nebraska reside within ten (10) miles of a segment of public road right-of-way described as:

a map of which is attached hereto, hereby petition the County Board of Lancaster County to vacate said segment of public road for the reason that:

And further request that a time and date be set for a public hearing before the County Board on this matter.

NAME

ADDRESS

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____

INFORMATION SHEET

This information sheet should be completed by each primary petitioner. The attached "Petition to Vacate with Release and Waiver of Rights and Title and Quit Claim to County of Lancaster, Nebraska" should also be completed according to the instruction contained in the Instruction Sheet.

1. Petitioner's Name _____
2. Petitioner's Address _____
3. Petitioner's Telephone Number _____
4. Street/Alley/Public Way sought to be vacated _____

5. Why are you seeking to have this street/alley/public way vacated?

6. What use(s) do you propose to make of the public way if vacated?

I (WE) DO INTEND TO PURCHASE (describe area intended to be purchased)

OF THE VACATED PUBLIC WAY WHICH ABUTS THE PROPERTY OWNED BY ME (US) AS DESCRIBED IN THE PETITION TO VACATE PUBLIC ROAD.

_____ **YES** _____ **NO**

Prior to the public hearing the property will be appraised. The purchase price of the portion you intend to buy must be deposited with the County Clerk before receiving a deed to said property or the property will be sold to any other party willing to pay the purchase price. The vacation resolution will not become final until the full price of the entire public road proposed to be vacated has been paid.

BE SURE THAT THE PETITION TO VACATE PUBLIC WAY HAS BEEN COMPLETED AND IS ATTACHED TO THE INFORMATION SHEET.

PETITION TO VACATE PUBLIC ROAD
WITH RELEASE AND WAIVER OF RIGHTS
AND TITLE AND QUIT CLAIM TO COUNTY
OF LANCASTER, NEBRASKA

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(For Register of Deeds Use Only)

TO THE COUNTY BOARD OF THE COUNTY OF LANCASTER, NEBRASKA

The undersigned property owner(s) hereby ask and petition you to vacate the following described street/alley/public road, to-wit:

in the County of Lancaster, Nebraska, to reserve and retain in said street, alley, or other public way such title, rights, easements and privileges as it may deem necessary. In consideration of the vacation of the above described street, alley or other public road, we, and each of us, for ourselves, our heirs, administrators, successors, and assigns, hereby waive and release any and all claims, causes of action, title, rights and demands of every nature, known or unknown, which may accrue to us, or which we now have, or which we may hereafter have as a result of or resulting from such vacation of said street, alley, or other public way; and hereby remise and forever quit claim unto the County of Lancaster, Nebraska and to its successors and assigns forever, all right, title, interest, estate, claim and demand, both at law and in equity, of, in and to all of said street, alley or other public way, together with all and singular there hereditaments thereunto belonging.

TO HAVE AND TO HOLD the above described street, alley or other public way unto the County Lancaster, Nebraska and to its successors and assigns, so that none of the undersigned, nor any person in his, her, their or its name(s) or behalf, shall or will hereafter claim or demand any right or title to the said premises or any part thereof, but they and every one of them shall by these presents be excluded and forever barred.

The undersigned hereby represent(s) that he, she, they or it is (are) the owner(s) of the following described property in Lancaster County, Nebraska, abutting on said street, alley or other public way, to-wit:

Dated this _____ day of _____, 20____.

State of _____)
)ss
_____ County)

Before me, a notary public qualified for said county, personally came _____

_____ known to be the identical person(s) who signed the foregoing instrument, and acknowledged the execution thereof to be his, her or their voluntary act and deed for the purposes therein set forth, and acknowledged that he, she or they signed the foregoing instrument with the view of having said County of Lancaster vacate said street, alley or other public road and the County of Lancaster reserving and retaining in said street, alley or other public road such title, rights and privileges as it may deem necessary, together with a waiver and release of any and all claims, causes of action, title, rights, demands and quitclaim.

WITNESS my hand and notarial seal on _____, 20____.

_____, Notary Public

My commission expires: _____

CORPORATE ACKNOWLEDGMENT:

STATE OF _____)
)ss
_____ COUNTY)

Before me, a notary public qualified for said county, personally came _____
_____, President of a corporation, known to me to be the President and identical person who signed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such officer and the voluntary act and deed of said corporation and that the corporate seal of said corporation was affixed thereto be its authority, for the purposes therein set forth, and acknowledged that he signed the foregoing instrument with the view of having said County of Lancaster vacate said street, alley or other public road and the County of Lancaster reserving and retaining in said street, alley or other public road such title, rights and privileges as it may deem necessary, together with a waiver and release of any and all claims, causes of action, title, rights, demands and quit claims.

WITNESS my hand and notarial seal on _____, 20____.

_____, Notary Public

My commission expires: _____